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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mathis Instruments Ltd.

Serial No. 75/872,488

Lawrence E. Laubscher, Jr. of Laubscher & Laubscher for Mathis Instruments Ltd.

David M. Abrahams, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Hanak, Walters and Chapman, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Mathis Instruments Ltd. has filed an application to register the mark TC PROBE for an "electronic instrument for testing and measuring thermal properties of material comprised of a circuitry unit, a sensor unit, and related software sold as a unit."[1] In response to the first office

[1] Serial No. 75/872,488, in International Class 9, filed December 16, 1999, based on use of the mark in commerce, alleging first use and use in commerce as of December 23, 1996. The application included a claim of priority, under Section 44(d) of the Trademark Act, based on a

action, applicant entered a disclaimer of "probe" apart from the mark as a whole.

The trademark examining attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

Applicant has appealed. Both applicant and the examining attorney have filed briefs, but an oral hearing was not requested. We reverse the refusal to register.

The examining attorney contends that TC is a commonly recognized acronym for "thermal conductivity"; that "probe" merely identifies the particular testing equipment, as evidenced by applicant's disclaimer thereof; and that TC PROBE merely describes the nature of a probe used to measure thermal conductivity.

The examining attorney submitted a page, dated May 4, 2000, from an Internet web site, www.acronymfinder.com, that states there are 68 definitions for "TC" and showing one of the definitions to be "Thermal Conductivity." We take judicial notice of the definition from volume 1 of the *Acronyms, Initialisms & Abbreviations Dictionary* (22nd ed., 1997), which lists "Thermal Conductivity" as a definition of

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Canadian application filed on November 17, 1999. However, in applicant's response of September 25, 2000, applicant deleted the priority claim.

"TC" along with numerous other unrelated definitions of "TC."

The examining attorney points to applicant's product fact sheet, entitled TC Probe™: Thermal Conductivity Instrument, which was submitted by applicant and includes the following statements:

> The TC Probe™ Thermal Conductivity Instrument is designed to measure thermal conductivities of solid materials in the range of 0.001 to 10.0 W/m K.
>
> …
>
> The TC Probe™ calculates the value of thermal conductivity (k) given known values of heat capacity … and density ….

Also, the examining attorney submitted an excerpt about this product from applicant's Internet web site, www.mathis.unb.ca/tcprobe, dated December 4, 2000, which includes the following statement:

> The TC Probe™ measures in a *non-destructive manner*, the thermal conductivity and other thermal properties of materials such as foam, insulation, polymers, ceramics, glass, silicone and natural fibers. "TC" stands for thermal conductivity, a thermal property desired by those looking at thermal properties and heat transfer. (*emphasis in original*.)

Applicant expressly does not dispute that the term "TC" as it is used in the mark means "thermal conductivity." However, applicant argues that "TC" is not a common abbreviation for thermal conductivity; that in the relevant field of science, the common abbreviation for the term thermal conductivity is the Greek letter kappa (κ) or the

Greek letter lambda (λ); that these abbreviations (κ and λ) are "generally recognizable to the average purchaser of applicant's goods"; and that the evidence does not support the examining attorney's position, especially in view of the numerous definitions submitted for "TC."[2]

In support of its position, applicant submitted e-mails from four scientists in the relevant field regarding the accepted abbreviations for "thermal conductivity."[3] These e-mails were in response to a request from applicant's president that states the following, in part:

> We are in the process of obtaining a trademark registration for "TC Probe." The trademark office has stated that "TC" is a commonly used abbreviation of thermal conductivity. We are appealing this.
>
> What I am in need of is:
> 1 – a reply to this e-mail saying that k and lambda are the only nomenclature terms you have seen for thermal conductivity (if there are others, include them, but it would be news to me).

The responses include the following statements:

> "I know of no usage of the term "TC" as related to thermal conductivity in any literature or standards with which I have been involved or reviewed." [John Mumaw, Chair of the American Standards and Test Methods (ASTM) C16 Subcommittee which standardizes thermal conductivity methods.]

[2] In its brief, applicant requests that, should it lose its appeal, the application be remanded to assert a claim of acquired distinctiveness. Raising the possibility of a Section 2(f) claim after appeal is untimely and will not be considered. Further, once an appeal is concluded, the Board has no jurisdiction to entertain such a request.

[3] This evidence was submitted with applicant's request for reconsideration. We are disappointed that the examining attorney responded to this evidence with what appears to be a form rejection without addressing the merits of the evidence submitted.

> "The notation TC is never used in mathematical texts …. I am seeing quite a number of manuscripts every year as a referee on thermal transport properties for five or six international … journals and TC is not used as a general notation for thermal conductivity in any written text." [Silas Gustafsson, inventor and distributor of thermal conductivity equipment from Sweden.]
>
> "For thermal conductivity, we typically use either k, K or lambda as nomenclature apart from the phrase 'thermal conductivity.' As far as I know, this is never abbreviated in any way…." [Wilfried Rombauts, Board member of the Vacuum Insulation Society and employee of Huntsman polyurethanes, a world supplier of insulation, of which thermal conductivity (R factor) is the major property.]
>
> "I have seen k, the Greek letter lambda, the Greek letter kappa (lower case) and the capital K used as the nomenclature terms used to represent thermal conductivity. I have never seen TC used as an abbreviation of thermal conductivity except in cases where the authors were ignorant of the subject matter to which they were referring." [Keith Kociba, editor of the proceedings of the North American Thermal Analysis Society (NATAS) and an employee of Lubrizol.]

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality,

feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

Further, with respect to abbreviations, we refer to the following statement of the predecessor court of our primary reviewing court in *Modern Optics, Incorporated v. The Univis Lens Company*, 110 USPQ 293, 295 (CCPA 1956) [In an opposition brought on the ground of descriptiveness, the court found insufficient evidence that "CV," an abbreviation for "continuous vision," was merely descriptive, regardless of whether or not "continuous vision" was merely descriptive]:

> [I]t is not necessary to determine whether those words ["continuous vision"] are merely descriptive of trifocal lenses, since appellee is not seeking registration of those words, but a mark whose dominant feature is the letters "CV." The letters "CV" are, of course, the initial letters of the words "continuous vision," and it is possible for initial letters to become so associated with descriptive words as to become descriptive themselves. [*citations omitted*.] It does not follow, however, that all initials of combinations of descriptive words are ipso facto unregistrable. While each case must be decided on the basis of the particular facts involved, it would seem that, as a general rule, initials cannot be considered descriptive unless they have become so generally

> understood as representing descriptive words as to be accepted as substantially synonymous therewith.

See also Racine Industries Inc. v. Bane-Clene Corp., 35 USPQ2d 1832, 1838 (TTAB 1994); and *Intel Corporation v. Radiation Incorporated*, 184 USPQ 54, 56 (TTAB 1974).

In the case before us, there is no question that the term "thermal conductivity" is generic for a property of materials. Applicant readily admits that in its mark, "TC" stands for "thermal conductivity." But, as the above-cited cases demonstrate, this is not enough. The question is whether the evidence establishes that the initials "TC" are "accepted as substantially synonymous" with "thermal conductivity." Applicant's product information is neutral on this issue. We find that the dictionary excerpts submitted by the examining attorney, indicating that, among numerous other possibilities, "TC" stands for "thermal conductivity" are insufficient to establish that "TC" is "accepted as substantially synonymous" with "thermal conductivity. This is particularly true in view of the e-mails from scientists indicating that "TC" is not used in the technical writing and discussion in this field.[4]

[4] While these e-mails are in response to a direct request from applicant for the statements made therein, we have taken the scientists statements as accurately reflecting their knowledge and, thus, acceptable to raise doubts as to the significance of the dictionary definitions as indicia of a widespread use of "TC" as an abbreviation for "thermal conductivity."

In view thereof, we cannot conclude that TC PROBE is merely descriptive of the goods identified in this application.

Decision: The refusal under Section 2(e)(1) of the Act is reversed.